NAGAMUTHU PUNNUSAMY & ORS A

v.

KETUA PENGARAH KEMENTERIAN PERUBATAN MALAYSIA & ORS B

HIGH COURT MALAYA, SHAH ALAM
ROSNAINI SAUB J
[JUDICIAL REVIEW NO: MT3-13-10-2009]
6 JULY 2009 C

CONSTITUTIONAL LAW: *Courts - Jurisdiction - Conflict of jurisdiction - Determination of religious status of a deceased person - Whether jurisdiction lies with Syariah courts or civil courts - Absence of jurisdiction of syariah court over non-Muslim - Syariah court vested with jurisdiction only where proven that deceased had converted to Islam before his demise - Article 121(1A) Federal Constitution* D

ISLAMIC LAW: *Jurisdiction - Syariah Court - Conversion to Islam - Determination of religious status of a deceased person - Whether jurisdiction lies with Syariah courts or civil courts - Syariah court vested with jurisdiction only where proven that deceased had converted to Islam before his demise - Sijil Akuan Masuk Islam accepted as proof of deceased's conversion to Islam - Deceased living a lifestyle and conduct inconsistent of a Muslim convert not to alter his status as a Muslim - Section 61(3)(b)(xi) Administration of the Religion of Islam (State of Selangor) Enactment 2003 - Article 121(1A) Federal Constitution* E F

The applicants, who were Sikhs, were the immediate family members of the deceased. The deceased passed away on 25 May 2009 and the body was sent to Hospital Sungai Buloh for a post-mortem. When the applicants sought to claim the body of the deceased from the hospital, they were informed by the 2nd respondent that the hospital could not release the body to them as it was believed that the deceased had converted to Islam. At the same time, officers from the 5th respondent also attempted to claim the body with the intention to conduct a burial according to Islamic rites. According to the 5th respondent, based on a Sijil Akuan Masuk Islam issued by Jabatan Hal Ehwal Agama Islam Pulau Pinang the deceased had converted to Islam on 11 August 1992. However, according to the applicants the deceased was never a Muslim and all his life he was professing the Sikh religion and they were not aware of the deceased's purported conversion G H I

A to Islam. The 5th respondent filed an application before the Shah Alam Syariah High Court asking the said court to determine whether the deceased died a Muslim. The applicants filed the present application for judicial review seeking, *inter alia*: (i) an order of *certiorari* to quash the decision of the 1st and 2nd respondents B in not allowing the applicants to claim the body of the deceased; (ii) a *mandamus* order that the 1st and 2nd respondents release the body to the applicants for cremation in accordance with Sikh religious rites; and (iii) a prohibition order preventing the respondents from conducting a burial other than in accordance to C the Sikh religion. The 1st to 4th respondents supported the stand taken by the 5th respondent while the 6th respondent supported the applicants' stand.

Held (dismissing the applicants' application with costs to 1st D to 5th respondents):

(1) The Administration of the Religion of Islam (State of Selangor) Enactment 2003 has expressly conferred the Syariah Court with jurisdiction to determine the religious status of a deceased person. The absence of jurisdiction of the Syariah Court over E non-Muslim, does not confer jurisdiction over the subject-matter to the civil court. This is because the subject matter still remains within the domain of the Syariah Court and art. 121(1A) of the Federal Constitution prohibits the civil court to interfere in such matter. (paras 15 & 17) F

(2) Before the Syariah Court could have jurisdiction to determine or declare that the deceased died a Muslim or otherwise, it had to be first proved that the deceased had indeed converted to Islam before his demise. If he was not a convert or a G Muallaf, then the Syariah Court had no jurisdiction to determine his religion at the time of his death. (para 23)

(3) In the absence of any evidence that the Sijil Akuan Masuk Islam was a forgery or fraudulently issued, there was no H reason why this court should not accept it as proof of the deceased's conversion to Islam. The applicants' averment that they were not aware of the deceased's conversion to Islam did not mean that the conversion did not take place. The existence of the Sijil Akuan Masuk Islam was sufficient proof I that the deceased had converted to Islam in 1992. He was

therefore a Muslim. The fact that the deceased lived a lifestyle and conduct inconsistent of a Muslim convert did not alter his status as a Muslim in the eyes of the existing laws. (paras 34, 35, 36)

(4) Due to the finding that the Sijil Akuan Masuk Islam proved that the deceased had converted to Islam in 1992, the Syariah Court had the jurisdiction to determine whether he was still a Muslim or not at the time of his death. This is provided for under s. 61(3)(b)(xi) of the Selangor State Enactment and by virtue of art. 121(1A) of the Federal Constitution this court had no jurisdiction over the matter. (para 37)

(5) In the circumstances, the action of the 1st and 2nd respondents in not releasing the body of the deceased to the applicants and referring the matter to the 5th respondent was justified and reasonable. Since the Shah Alam Syariah High Court had already issued a declaration that the deceased died a Muslim, the 5th respondent, being the statutory body responsible for the administration of Islamic affairs in the State of Selangor was the appropriate authority to conduct an Islamic burial for the deceased. (para 38)

Case(s) referred to:

Abdul Kahar Ahmad v. Kerajaan Negeri Selangor Darul Ehsan; Kerajaan Malaysia & Anor (Interveners) [2008] 4 CLJ 309 FC ***(refd)***

Kaliammal Sinnasamy v. Pengarah Jabatan Agama Islam Wilayah Persekutuan & Yang Lain [2006] 1 CLJ 753 HC ***(refd)***

Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi [2004] 3 CLJ 409 FC ***(refd)***

Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 5 CLJ 253 FC ***(refd)***

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 FC ***(refd)***

Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors [2003] 3 CLJ 289 FC ***(refd)***

Myriam v. Mohamed Ariff [1971] 3 LNS 1 ***(refd)***

Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor [1991] 2 CLJ 1559; [1991] 3 CLJ (Rep) 328 HC ***(refd)***

Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 2 CLJ 5 FC ***(refd)***

Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals [2008] 2 CLJ 1 FC ***(refd)***

Legislation referred to:
Administration of the Religion of Islam (State of Selangor) Enactment 2003, ss. 2, 61(3)(b)(xi), 74(2), 113(2)
Federal Constitution, art. 121(1A)

For the applicants - Rajesh Kumar (K Shamuga & Fahri Azzat with him); M/s Rajesh Kumar
For the 1st, 2nd & 4th respondents - Shamsul Bolhassan (Noor Hisham Ismail & Mohd Radhi Abbas); AG's Chambers
For the 3rd respondent - Md Azahari Abu Hanif; Selangor State Government
For the 5th respondent - Hj Mohamed Haniff Khatri Abdulla (Zainul Rijal Abu Bakar, Hj Abdul Rahim Sinwan & Mohd Zulkhairi Abd Aziz with him); M/s Zainul Rijal Talha & Amir
For the 6th respondent - Joginder Singh (Balwant Singh Sidhu with him); M/s Jagjit Singh & Co

Reported by Amutha Suppayah

JUDGMENT

Rosnaini Saub J:

[1] In this judicial review application, the applicants are seeking, *inter alia*, the following orders:

a. an order of *certiorari* to quash the decision of the 1st and 2nd respondents in not allowing the applicants to claim the body of one Mohan Singh a/l Janto Singh ('the deceased') from the Sungai Buluh Hospital and for requesting a confirmation from the 5th respondent, ie, Majlis Agama Islam Selangor (MAIS), whether the deceased died a Muslim or not, and

b. a *mandamus* order that the 1st and 2nd respondents release the body of the deceased to the applicants in order for the body to be cremated in accordance with Sikh religious rites.

[2] Apart from that the applicants are also seeking prohibition order preventing the respondents from conducting a burial other than in accordance to the Sikh religion for the deceased body. Further, the applicants also prayed for declaratory orders to declare a couple of provisions contained in the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ('the Selangor State Enactment') as null and void for being contrary to the Federal Constitution.

[3] The background facts that led to the filing of this judicial review application are as follows. The applicants, who are Sikhs, are the immediate family members of the deceased. The deceased passed away in an apartment in Damansara Damai on 25 May 2009 and the body was sent to Hospital Sungai Buloh where a post-mortem was conducted to determine the cause of death. It is found that the deceased had died due to a heart attack. When the applicants sought to claim the body of the deceased from the hospital on the same day, they were informed by the 2nd respondent, ie, the Ketua Pengarah Hospital Sungai Buluh, that the hospital cannot release the body of the deceased to them as it is believed that the deceased had converted to Islam and that the hospital has referred the matter to the 5th respondent for confirmation of the deceased religious status. It is the stated intention of the applicants that they wanted to claim the body of the deceased so that it can be cremated according to Sikh religious rites.

[4] At the same time, officers from Majlis Agama Islam Selangor (MAIS), ie, the 5th respondent, also attempted to claim the body of the deceased with the intention to conduct a burial of the same according to Islamic rites. According to the 5th respondent, based on a Sijil Akuan Masuk Islam issued by Jabatan Hal Ehwal Agama Islam Pulau Pinang the deceased had converted to Islam on 11 August 1992 and had chosen the name Mohammad Hazzery Shah Mohan bin Abdullah as his Muslim name. The applicants strongly opposed the 5th respondent's claim for the body of the deceased. According to the applicants the deceased was never a Muslim and all his life he was professing the Sikh religion and they are not aware of the deceased purported conversion to Islam. Apparently there were discussions between the parties to find a solution to the problem they were facing. On the following day, 26 May 2009, the 5th respondent filed an application before the Shah Alam Syariah High Court asking the said court to determine whether the deceased died a Muslim. The 5th respondent's application before the Syariah High Court was made *ex parte* and in accordance with s. 61(3)(b)(xi) of the Selangor State Enactment.

[5] On 29 May 2009 the applicants filed their application in this court for leave to commence this judicial review proceeding and on 1 June 2009 leave was granted. On the same day, ie, 1 June

A 2009, this court also issued an interim order preventing the 1st and 2nd respondents from releasing the body of the deceased to any party pending the disposal of the applicants' judicial review application. For the record, this court has been informed that on 4 June 2009, the Shah Alam Syariah High Court had declared
B that the deceased died a Muslim and ordered the body to be released to the 5th respondent. The 1st and 2nd respondents however are unable to comply with that Syariah Court order because of the existing interim order of this court.

C **[6]** This is a case of competing claims for the body of the deceased. The applicants are saying that the deceased was always a Sikh and died as a Sikh. The 5th respondent on the other hand claimed that the deceased became a Muslim when he converted to Islam on 11 August 1992 and therefore the appropriate
D authority to determine whether he died as a Muslim or not is the syariah court. Essentially the dispute in the present case is therefore between the applicants and the 5th respondent. The 1st to 4th respondents are supporting the stand taken by the 5th respondent while the 6th respondent, ie, Majlis Perundingan
E Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Tau, is supporting the applicants' stand.

[7] At the outset, when this matter came before me, I have requested counsels for all parties to focus their submissions on the
F jurisdictional issue as this case revolves around the question as to which court has the jurisdiction to determine the religion of a Muslim convert at the time of his or her demise. However, after hearing the lengthy submissions and submissions in reply of the respective counsels, particularly counsel for the applicants, the 5th
G respondent and the 6th respondent, I find that the purported conversion of the deceased to Islam in 1992 is a highly disputed question of fact. It is therefore incumbent upon me to deal with and decide this issue but I will do so later. Now I shall deal with the jurisdiction issue first.

H **[8]** It was argued for and on behalf of the applicants and supported by the 6th respondent that the relatively recent decisions of the Federal Court in *Latifah Mat Zin v. Rosmawati Sharibun & Anor* [2007] 5 CLJ 253 and *Abdul Kahar Ahmad v. Kerajaan Negeri Selangor Darul Ehsan; Kerajaan Malaysia & Anor*
I *(Interveners)* [2008] 4 CLJ 309 have impliedly overruled the

'subject-matter approach' enunciated in *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5. This is because, according to counsels for the applicants and the 6th respondent, based on *Latifah*'s case *(supra)* the syariah court can only exercise jurisdiction when all the following conditions are satisfied, that is:

a. all parties are persons professing the religion of Islam, ie, Muslim; and

b. that the Syariah Court is expressly conferred jurisdiction of the matters by the relevant state law where the state legislature has the power to legislate under Item 1 of the State List in the 9th Schedule of the Federal Constitution.

[9] I think the basis for the applicants' counsel for such an argument emanates from the following observations made by Abdul Hamid Mohamad, FCJ (as he was then) in the *Latifah*'s case *(supra)*:

> ... It can never be that once the syariah courts are established the courts are seized with jurisdiction over all the matters mentioned in item 1 (of the State List of Schedule Nine of the Federal Constitution) automatically. It has to be provided for. (para 43)

> The point to note here is that both courts, civil and syariah, are creatures of statutes. Both owe their existence to statutes, the Federal Constitution, the Acts of Parliament and the State Enactments. Both get their jurisdictions from statutes ie, constitution, federal law or State law, as the case may be. So, it is to the relevant statutes that they should look to determine whether they have jurisdiction or not. Even if the syariah court does not exist, the civil court will still have to look at the statutes to see whether it has jurisdiction over a matter or not. Similarly, even if the civil court does not exist, the syariah court will still have to look at the statute to see whether it has jurisdiction over a matter or not. Each court must determine for itself first whether it has jurisdiction over a particular matter in the first place, in the case of the syariah courts in the States, by referring to the relevant State laws and in the case of the syariah court in the Federal Territory, the relevant Federal laws. Just because the other court does not have jurisdiction over a matter does not mean that it has jurisdiction over it. So, to take the example given earlier, if one of the parties is a non-Muslim, the syariah court does not have jurisdiction over the case, even if the subject matter falls within

A its jurisdiction. On the other hand, just because one of the parties is a non-Muslim does not mean that the civil court has jurisdiction over the case if the subject matter is not within its jurisdiction. (para 45)

B **[10]** Relying on these observations made the learned FCJ, counsels for the applicants and the 6th respondents are saying that not only the subject matter must be matter within the jurisdiction of the Syariah Court but also the parties. If one of the parties is non-Muslim then the syariah court does not have jurisdiction even if the subject matter is matter related to Islamic C law. The counsel for the 6th respondent, who was also the counsel involved in the *Soon Singh*'s case, severely criticized the decision of the Federal Court. He submitted that Federal Court's judgment in *Soon Singh*'s case is flawed because of the failure of the court to recognise that the conversion to Islam by a minor is D invalid and urged this court to not be bound by *Soon Singh*'s case. With respect, I think the Federal Court did consider the submission on the validity of the minor's conversion to Islam but it found that on the facts of that case it is not a relevant issue in the appeal and in any event the minor had continued to remain a E Muslim for four years after he had attained the age of majority. Therefore throughout that four years of his adult life he was a Muslim and thus his renunciation of his religion should be rightly dealt with by the syariah court.

F **[11]** The 5th respondent's counsel (together with the 1st to 4th respondents) disagree with the applicants' counsel that *Latifah*'s case has impliedly overruled *Soon Singh*'s case and argued that the subject-matter approach enunciated in that case is still good law. The 5th respondent's counsel submitted that the remarks or G observations made by Abdul Hamid Mohamad, FCJ (as he was then) in *Latifah*'s case was just *obiter* and not the *ratio decidendi* of the case.

[12] I think there is two aspects of jurisdiction that we need to H bear in mind here when we refer to the syariah court. First is jurisdiction in respect of subject-matter. Second is jurisdiction in respect of parties to the proceedings before it. The two are actually intertwined with each other but not in the manner argued by the applicants and 6th respondent's counsels. The remark I made by Abdul Hamid Mohamad, FCJ (as he was then) in

Latifah's case that are relied upon by the applicants' counsel must not be taken out of context and should be seen in the proper perspective. A

[13] Jurisdiction in respect of subject-matter means that the syariah court shall have jurisdiction in matters conferred to it by the relevant state enactment. This is the subject-matter approach as enunciated in *Soon Singh*'s case. The one criticism that may be leveled at the decision of *Soon Singh*'s case is the 'implication method' applied by the court in that case. In that case the Federal Court was faced with the question which court, ie, civil or syariah, has the jurisdiction to determine the issue of apostasy or conversion out of Islam by a Muslim. First, the court acknowledged and confirmed that the issue of apostasy or renunciation of Islam is a matter of Islamic law and as such should be within the jurisdiction of the syariah court. However the problem is that at the material time, the relevant State Enactment, ie, the Kedah Administration of Muslim Law Enactment 1962 did not have express provisions conferring jurisdiction on the syariah court to deal with apostasy. The Kedah State Enactment only has provisions relating to conversion to Islam. The Federal Court then ruled that when there is an express provision conferring jurisdiction to syariah court in matters relating to conversion to Islam it must necessarily, by implication, also include matters relating to conversion out of Islam. It is the implication method of conferring jurisdiction on the syariah court that is subjected to frequent criticisms. But the subject-matter approach in *Soon Singh*'s case continues to be followed and reaffirmed by subsequent cases and these cases include: B C D E F

a. *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors* [2003] 3 CLJ 289, Federal Court; G

b. *Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi* [2004] 3 CLJ 409, Federal Court; and H

c. *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 3 CLJ 557, Federal Court.

However in these subsequent cases, the court did not have to resort to the 'implication method' as there is specific provision in the relevant State Enactment conferring jurisdiction to the syariah court on the subject-matter in issue. I

A **[14]** Now we shall look at s. 61(3)(b)(xi) of the Selangor State Enactment. Section 61(3)(b)(xi) of the Selangor State Enactment stipulates as follows:

> S 61(3) The Syariah High Court shall:
>
> B (b) in its civil jurisdiction, hear and determine all actions and proceedings if all the parties to the actions or proceedings are Muslim and the actions or proceedings relate to:
>
> (xi) a declaration that a deceased person was a Muslim or otherwise at the time of his death;
>
> C

[15] It can be seen that the Selangor State Enactment has expressly conferred the syariah court with jurisdiction to determine the religious status of a deceased person.

D **[16]** Just assume for a moment, for the sake of argument, that the deceased in our presence case is a Muslim by virtue of his conversion in 1992; then the applicants being non-Muslim cannot utilized s. 61(3)(b)(xi) of the Selangor State Enactment to go to the syariah court to try and get a declaration from that court that E the deceased died not as a Muslim. In fact they will not be able to participate (except may be as mere witnesses only) in the syariah court when the said court is hearing an application under the said s. 61(3)(b)(xi). Being non-Muslim they have no *locus standi*. In *Subashini Rajasingam v. Saravanan Thangathoray & Other* F *Appeals* [2008] 2 CLJ 1 the Federal Court through the judgment of Nik Hashim FCJ acknowledged the fact that a non-Muslim has no *locus standi* in the syariah court when he made the following remark:

> G Thus, the contentions that the wife could submit to the jurisdiction of the Syariah Court and have recourse to s. 53 of the 1993 Act (ie, the Administration of Islamic Law (Federal Territories) Act) are not quite correct as the 1993 Act limits its jurisdiction to Muslim only. The wife, being a non-Muslim, has no locus in the Syariah Court. (para 22)

H

[17] However in my judgment, that does not mean the syariah court has no jurisdiction to decide on the Muslim status of the deceased as the subject matter is within its jurisdiction. It is my considered opinion that the absence of jurisdiction of the syariah I court over non-Muslim, does not confer jurisdiction over the subject-matter to the civil court. This is because the subject matter

still remains within the domain of the syariah court and art. 121(1A) of the Federal Constitution prohibits the civil court to interfere in such matter. Therefore, it cannot be a correct proposition of the law when the applicants' counsel submitted that the civil court shall have jurisdiction over the subject-matter herein because the applicants are non-Muslim.

[18] The net effect of this scenario is that the applicants being non-Muslim cannot go to syariah court as they have no *locus standi*. On the hand they also cannot come to the civil court as the civil court has no jurisdiction over the subject-matter, ie, the religious status of a deceased Muslim at the time of his demise. This is probably the scenario contemplated by Abdul Hamid Mohamad, FCJ (as he was then) in *Latifah*'s case when his Lordship said:

> So, there may be cases over which neither court has jurisdiction. It may be said that it cannot be so. In my view, it can be so, because either court obtains its jurisdiction from statute, **not from the fact that the other court does not have jurisdiction over the matter.**

[19] That begs the question – so where can the applicants go then in such a scenario? Perhaps it is now opportune for me to again refer to the observation made by Abdul Hamid Mohamad, FCJ (as he was then) in *Latifah*'s case and I quote:

> The problem is, everyone looks to the court to solve the problem. Judges too (including myself), unwittingly, took upon themselves the responsibility to solve the problem of the legislature because they believe that they have to decide the case before them one way or the other. That, in my view is a mistake. The function of the court is to apply the law, not make or amend law not made by the legislature. Knowing the inadequacy of the law, it is for the legislature to remedy it, by amendment or by making new law. It is not the court's function to try to remedy it.

[20] However, let us now assume for the moment another scenario, that is, the deceased was never a Muslim, ie, he has not converted to Islam or the purported conversion is never proved; then in such a case the syariah court will have no jurisdiction to determine the religious status of the deceased. This is because the deceased in the first place cannot be deemed to be a Muslim as defined under s. 2 of the Selangor State Enactment and being

non-Muslim the question of whether he died a Muslim or not does not arise at all. Further Item 1 of the State List of Schedule Nine of the Federal Constitution states that the syariah court shall have jurisdiction only over persons professing the religion of Islam, ie, Muslim. It would therefore be unconstitutional to confer jurisdiction to the syariah court to determine the religion of the deceased if the deceased was never a Muslim.

[21] Article 121(1A) of the Federal Constitution stipulates that this court, being a civil court, shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts. Abdul Hamid Mohamad, CJ in *Abdul Kahar Ahmad v. Kerajaan Negeri Selangor Darul Ehsan; Kerajaan Malaysia & Anor (Interveners)* [2008] 4 CLJ 309 has repeated what he said in *Latifah*'s case that the provision of art. 121(1A) of the Federal Constitution was inserted to avoid a situation as in *Myriam v. Mohamed Ariff* [1971] 3 LNS 1 and not to oust the jurisdiction of this court in matters that rightly belong to it. Therefore, before the jurisdiction of this court is excluded, it must first be shown that the syariah court has jurisdiction over the matter.

[22] Applying the above proposition of the law, it now becomes necessary for this court to determine, in the context of our present case, whether the syariah court has jurisdiction over the deceased. The source of jurisdiction of the syariah court in determining whether a deceased person was a Muslim or otherwise at the time of his death is s. 61(3)(b)(xi) of the Selangor State Enactment. I have already referred to this provision in the earlier part of my judgment. Careful reading of this provision will show that the civil jurisdiction of the Syariah High Court is in respect of matters where the parties are Muslim. This is in consonance with the provisions of Item 1 Schedule Nine of the Federal Constitution where it is expressly stipulated that the syariah court shall have jurisdiction over persons professing the religion of Islam only. The words in sub-paragraph (xi) need to be highlighted. It says:

> (xi) a declaration that **a deceased person** was a Muslim or otherwise at the time of his death.

[23] The phrase 'a deceased person' appearing therein cannot be just any deceased person. It must mean a person who was a Muslim before he died. Any other interpretation would run foul of the constitutional provision relating to jurisdiction of syariah court

over Muslim only in Item 1 of the State List Schedule Nine of the Federal Constitution. This court must interpret or construe the said sub-paragraph (xi) in a manner that is consistent with the Federal Constitution. Therefore, before the syariah court can have jurisdiction to determine or declare that the deceased in our present case died a Muslim or otherwise, it must first be proved that the deceased has indeed converted to Islam before his demise. If he is not a convert or a Muallaf, then the syariah court has no jurisdiction to determine his religion at the time of his death. In fact if the deceased was never a Muslim, the question of whether he died a Muslim never arise at all.

[24] The difficult question to ask here is this, who then shall decide whether the deceased was never a non-Muslim? The 5th respondent's counsel and supported by the 1st to 4th respondents, submitted that the proper forum for determining whether a person died a Muslim or not is the syariah court as this is expressly conferred by s. 61(3)(b)(xi) of the Selangor State Enactment and that being the case art. 121(1A) prohibits the civil court from interfering with the syariah court's jurisdiction. But this submission is premised on the assumption that the deceased's conversion to Islam is a given fact. But that is not the case here. The deceased's conversion to Islam is highly disputed by the applicants.

[25] I think there is inadequacy of the law on this particular point. It is a grey area which the legislature and the relevant authority ought to look at seriously.

[26] Be that as it may, in dealing with this difficult situation of the law I am guided by what was said by Abdul Hamid Mohamad, CJ in *Abdul Kahar Ahmad*'s case and in *Latifah*'s case, that is, it is the duty of this court when face with the jurisdictional issue to see whether the particular matter falls under the jurisdiction of the syariah court or not.

[27] Therefore, it seems to me that in order for this court to be able to determine whether or not the syariah court has jurisdiction over the deceased, it becomes not only necessary but also unavoidable for this court to make a definite finding of fact whether his purported conversion to Islam is a proven fact. In my considered opinion, art. 121(1A) of the Federal Constitution is not intended to hinder or prevent this court from embarking into such

fact-finding enquiry. If after such an enquiry this court finds that the deceased was never a Muslim, then the syariah court has no jurisdiction and this court can therefore hear and decide on this application for judicial review. If on the other hand, the deceased was indeed a Muslim by virtue of his conversion in 1992, then the jurisdiction to determine whether he died a Muslim or not rests with the syariah court. However, I must caution myself that in doing so, this court is not concerned about compliance of any precepts of Islamic law or Hukum Syarak pertaining to conversion. The court is merely trying to establish whether the conversion did happen or not based on the evidence produced by the 5th respondent and the law applicable thereto.

[28] *Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor* [1991] 2 CLJ 1559; [1991] 3 CLJ (Rep) 328 illustrated the fact-finding enquiry undertaken by the court to determine whether the deceased was a Buddhist or a Muslim. After evaluating the evidence, the High Court found that the deceased's purported conversion to Islam was not proven and instead there was ample evidence to show that he was a Buddhist right until the day he died. The learned judge, Eusoff Chin J (as he was then) granted a declaration sought by the widow that the deceased was a Buddhist during his lifetime and at the time of his death. However it should be noted that art. 121(1A) of the Federal Constitution was never discussed in that case.

[29] The applicants are claiming that they are not aware of the deceased's conversion to Islam and dispute the Sijil Akuan Masuk Islam. The applicants' case is supported by several affidavits filed on their behalf. The first is the affidavit affirmed by Baldi Kaur a/p Janto Singh, the 2nd applicant herein and the biological sister of the deceased. She has affirmed and filed a total of three affidavits in this proceeding. She averred that the deceased had always stayed with her in Selangor and lived his entire life as a Sikh. She also averred that she or other members of her family had no knowledge of the deceased's purported conversion to Islam. On 12 September 1997 the deceased married one Alice Ajan, a Christian and this marriage was duly solemnized and registered under the Law Reform (Marriage and Divorce) Act 1976. In the register of marriage the deceased's religion was stated as Sikhism – see exh. 'A1' of the 2nd applicant's afidavit sokongan. From the said marriage they had a daughter. In the

birth certificate of the daughter, the deceased's religion was also stated as Sikhism – see exh. 'A2'. Further, the 2nd applicant averred that when their mother passed away in 2006, it was the deceased who performed the Sikh ritual at their mother's funeral. The deceased did not have his particulars in his Identity Card changed even after he purportedly converted to Islam – see exh. 'A3' in the 2nd applicant's afidavit kedua. In fact the Jabatan Pendaftaran Negara in a letter dated 27 Mei 2009 to the 5th respondent confirmed that there is no change of particulars in the deceased's Identity Card and that the Jabatan's record showed that the deceased's religion was Sikhism – see exh. 'MK3' of the 5th respondent's afidavit balasan. In one of the two affidavits affirmed by Ng Lum Weng for and on behalf of the applicants, he deposed that he had known the deceased for almost 24 years and the deceased never told him about the purported conversion to Islam. In fact he averred that the deceased had lived as a Sikh and practiced the Sikh religion all the times. Ng Lum Weng was the deceased's colleague and friend and he was the one who found the deceased lifeless in his apartment on that fateful day.

[30] It was argued by the applicants' counsel (and supported by the 6th respondent) that the deceased's lifestyle or the way he lived was not consistent with the fact that he was a Muslim. It is contended that it was not a conduct reasonably expected from a person who has converted to Islam.

[31] The learned counsel for the 5th respondent in reply argued that the evidence relating to the deceased's lifestyle and conduct should be left to the syariah court to evaluate when that court is deciding whether the deceased died a Muslim or not. In fact the 5th respondent did produce some of these evidence to the Shah Alam Syariah High Court. However, as it turned out the 5th respondent was unable to obtain the co-operation of the applicants and their witnesses to appear in the Syariah High Court as witnesses. But I must say that the applicants' refusal to participate in the Syariah High Court proceeding regarding the application for declaration whether the deceased died a Muslim or not is in the circumstances understandable as they truly believed that their testimonies as non-Muslim at the syariah court will not carry as much weight as a Muslim. But I shall not attempt to dwell on whether or not such a belief is justified.

[32] The basis for the 5th respondent's claim for the body of the deceased is a Sijil Akuan Masuk Islam issued by Jabatan Hal Ehwal Agama Islam Pulau Pinang dated 11 August 1992 that the 5th respondent is saying is conclusive proof that the deceased had converted to Islam. A copy of the said Sijil Akuan Masuk Islam was produced before the court annexed to the affidavit of Dato' Hj Muhammed Khusrin bin Hj Munawi, the Secretary of MAIS (5th respondent's afidavit balasan). Apart from a copy of the Sijil Akuan Masuk Islam, there was also a copy of a letter dated 25 May 2009 from Jabatan Hal Ehwal Agama Islam Pulau Pinang. That letter essentially confirmed that the deceased had converted to Islam in 1992. It can be seen from this letter that the deceased had chosen Mohammad Hazzery Shah Mohan bin Abdullah as his Muslim name and that his conversion was registered under No. Pendaftaran Negeri 126/92 and Pendaftaran Daerah 80/92. Therefore, it is not quite correct for the applicants' counsel to say that the deceased's conversion was never registered.

[33] It is pertinent to note that the Islamic Law Enactment applicable to the State of Penang at the material time when the deceased purportedly converted to Islam, ie, on 11 August 1992, was the Administration Of Muslim Law Enactment 1959 ('the 1959 Penang Enactment'). The provisions relating to converts in the 1959 Penang Enactment are found in Part VIII and there is no provision relating to the issuance of Sijil Akuan Masuk Islam in Part VIII of the 1959 Penang Enactment. Accordingly there is also no provision in the 1959 Penang Enactment relating to the conclusiveness of a Sijil Akuan Masuk Islam. The 1959 Penang Enactment was then replaced by the Penang Administration of Muslim Law Enactment 1993 ('the 1993 Penang Enactment') that came into force only on 31 March 1994. I agree with the submission of the applicants' counsel that the relevant law that is applicable to conversion to Islam by a non-Muslim in Penang on 11 August 1992, the day the deceased purportedly converted to Islam, is the 1959 Penang Enactment.

[34] However, in my opinion, the absence of any provision relating to the Sijil Akuan Masuk Islam in the 1959 Penang Enactment and the corresponding provision relating to its conclusiveness as evidence of its contents does not mean that this court cannot accept the said Sijil. The said Sijil was probably issued by Jabatan Hal Ehwal Agama Islam Pulau Pinang at the

material as an administrative practice to record non-Muslim conversions to Islam. In the absence of any evidence that the Sijil Akuan Masuk Islam was a forgery or fraudulently issued, there is no reason why this court should not accept it as proof of the deceased's conversion to Islam. The applicants' averment that they are not aware of the deceased's conversion to Islam does not mean that the conversion did not take place. It is unfortunate that the deceased did not tell them.

[35] In my judgment, the existence of the Sijil Akuan Masuk Islam is sufficient proof that the deceased had converted to Islam in 1992. He was therefore a Muslim. Eventhough his conversion to Islam was in Penang, pursuant to s. 113(2) of the Selangor State Enactment, he shall be treated as a Muslim also in the State of Selangor and being a Muslim he was subjected to the provisions of the Selangor State Enactment. In the State of Selangor a Muslim shall at all times be acknowledged and treated as a Muslim until and unless a declaration is made by the syariah court that he is no longer a Muslim – see s. 74(2) of the Selangor State Enactment.

[36] The fact that the deceased lived a lifestyle and conduct inconsistent of a Muslim convert does not alter his status as a Muslim in the eyes of the existing laws. In the case of *Kaliammal Sinnasamy v. Pengarah Jabatan Agama Islam Wilayah Persekutuan & Yang Lain* [2006] 1 CLJ 753, Raus J (now JCA) was faced with similar evidence as that presented by the applicants herein regarding the deceased way of life that is not consistent of being a Muslim. The learned judge opined that such evidence are evidence to be considered before the syariah court in accordance with Islamic Law when determining whether the deceased is no longer a Muslim when he died.

[37] Since I have made a finding that the Sijil Akuan Masuk Islam proved that the deceased has converted to Islam in 1992, it is the syariah court that shall have the jurisdiction to determine whether he was still a Muslim or not at the time of his death. This is provided for under s. 61(3)(b)(xi) of the Selangor State Enactment and by virtue of art. 121(1A) of the Federal Constitution this court has no jurisdiction over the matter.

A **[38]** In the circumstances, the action of the 1st and 2nd respondents in not releasing the body of the deceased to the applicants and referring the matter to the 5th respondent is justified and reasonable. As I have alluded to earlier, the Shah Alam Syariah High Court had already issued a declaration that the
B deceased died a Muslim and therefore, the 5th respondent, being the statutory body responsible for the administration of Islamic affairs in the state of Selangor would be the appropriate authority to conduct an Islamic burial for the deceased.

C **[39]** For the reasons stated, I hereby dismiss the applicants' application with costs to 1st to 5th respondents. The interim order of this court dated 1 June 2009 is hereby dissolved.

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